

DOMESTIC VIOLENCE RESTRAINING ORDERS: THE BASICS

Satellite Broadcast

Quiz Answers

1. If the court does not specify a termination date the protective order expires in one year.
FALSE

(FC 6345)

The failure to state the expiration date on the face of the form creates an order with duration of three years from the date of issuance.

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Court Order

To the person named in 2: This is a court order.

Court will fill out section below.

There was a hearing on (date): _____ at (time): ☐ a.m. ☐ p.m. Dept.: _____ Rm.: _____

Judge _____ made the orders at the hearing.

The orders end at (time): ☐ midnight or _____ ☐ a.m. ☐ p.m. on (date): _____

■ If no date is written, the restraining orders end 3 years after the date of the hearing.

■ If no time is written, they end at midnight on the end date.

■ Note: Custody, visitation, or support orders have different end dates and usually end when the children turn 18.

All orders are on pages 2 and 3 and attachment pages (if any).

End Date

2. Personal service of the Restraining Order After Hearing is not required if the person to be restrained was personally served with the Temporary Restraining Order and Notice of Hearing. **TRUE**

(FC 6384)

If a person named in a temporary restraining order or emergency protective order is personally served with the order and notice of hearing with respect to a restraining order or protective order based thereon, but the person does not appear at the hearing either in person or by counsel, and the terms and conditions of the restraining order or protective order are identical to the temporary restraining or emergency protective order, except for the duration of the order, the restraining order or protective order may be served on the

person by first-class mail sent to that person at the most current address for the person available to the court.

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☐ Service

- a. ☐ The people in ① and ② were at the hearing. No other proof of service is needed.
- b. ☐ The person in ① was at the hearing. The person in ② was not. But Proof of Service of DV-110 was presented to the court.
 - (1) ☐ The judge's orders in this form are the same as DV-110 except for the end date. This order can be served by mail.
 - (2) ☐ The judge's orders in this form are different from DV-110. Someone — not the people in ① or ② — must personally "serve" a copy of this order to the person in ②.
- c. ☐ The people in ① and ② have agreed in writing to this order. No other proof of service is needed.

3. Most domestic violence cases are based on false allegations. **FALSE**

It is much more likely that a victim of domestic violence will minimize or deny the violence rather than accuse her partner falsely.) (Karla Fischer, Neil Vidmar, and Rene Ellis, "The Culture of Battering and the Role of Mediation in Digestive Violence Cases," 46 Southern Methodist Univ. Law Review 2117, Section II.c (1993).

4. Women beat men at about the same rate as men beat women. **FALSE**

(Bureau of Justice Statistics, U.S. Department of Justice)

Women are 5 to 8 times more likely than men to be victimized by an intimate partner. In 92% of all domestic violence incidents, crimes are committed by men against women. However, as court staff, we must remember that we cannot assume that the woman is always the victim, it may be

5. The Court has 48 hours to make a determination on Request for Restraining Order. **FALSE**

(FC 246)

The code tells us that the ex parte Request for Restraining Order shall be issued or denied on the same day as it is submitted to the court, unless the application is submitted too late in the day to permit effective review; if that is the case, then it shall be considered on the next judicial business day in time for the order to be filed by the clerk.

6. Violence between a man and woman in a hotel is civil harassment. **TRUE or FALSE**
(Either answer may be correct)

The correct answer cannot be determined without knowing the relationship of the parties. If the parties were co-workers, the answer would be true. However, if the parties have or have had a dating relationship, or are married, the answer would be false, this would be

domestic violence. It is important to consider all the facts before determining whether a party should request civil harassment or domestic violence protective orders.

On page 8 of your handouts you will find a comparison of Civil harassment and Domestic Violence Protective

| Civil Harassment | Domestic Violence |
|--|---|
| RELATIONSHIP | RELATIONSHIP |
| Unrelated person | Relatives, In-laws, Relatives by Adoption – within the 2 nd degree |
| Related person or relative – 3 rd degree or more | Live/lived with, have/had intimate or dating relationship |
| All persons who do not fall under DV relationship requirements | Engaged/married or used to be engaged/married |
| | Parents of a child under 18 years |
| | Voluntary Declaration of Paternity signed regarding their children |

On page 7 of your handouts we have provided a detailed comparison of protective orders. (discuss the way to use this job aid.)

7. An EPO is effective for 5 judicial and 7 calendar days. **TRUE**

(FC6256)

An Emergency Protective Order expires at the earlier of:

The close of judicial business on the 5th court day following the day of its issuance.

OR

The 7th calendar day following the day of issuance.

8. A minor under the age of 18 cannot file a request for protective order. **FALSE**

(FC 6301 and CCP 372(b))

A minor, 12 years or older may appear in court without an attorney, guardian or guardian ad litem to request or oppose a domestic violence, civil harassment, or workplace harassment temporary restraining order.

9. Removal of firearms is solely at the discretion of the judge, no particular hearing is required. **FALSE**

(FC 6389)

The code tells us that a person subject to a protective order SHALL be ordered to relinquish possession or control of any firearms and not to receive or purchase a firearm. If the respondent is present at the hearing, relinquishment SHALL be within 24 hours, if respondent was not present at the hearing, relinquishment SHALL be 48 hours after being

served with the order. A person ordered to relinquish firearms SHALL file with the court a receipt showing sale or surrender to law enforcement with 72 hours of receiving the order. If the restrained person is a peace officer the court may grant an exemption for the relinquishment requirements if the respondent can show that a particular firearm is necessary for personal safety. However prior to making the finding, the court shall require a mandatory psychological evaluation of the peace officer.

10. Parties may agree to mutual protection orders by stipulation. **FALSE**

(FC 6305)

The court must make a finding that each party has committed acts of domestic violence. Both parties must personally appear and each party must present written evidence of abuse or domestic violence AND the court must make detailed findings of fact that both parties acted as an aggressor, that neither party acted primarily in self-defense.

11. The Court is required to provide 5 free certified copies of the protective order. **TRUE**

(FC 6305)

The moving party should receive 5 certified copies that include all attachments to the order. However, you will be actually making 6 copies, as one copy must be forwarded to the Domestic Violence Registry for input into their data system. This also applies to a re-issuance, modification, amendment or termination of a domestic violence order.

12. If the parties have a domestic violence restraining order, and there is a criminal protective order also in place, the domestic violence order has priority. **FALSE**

(Penal Code 136.2(i)(2))

A protective order issued in a domestic violence criminal case has precedence in enforcement over any civil order against the defendant."